



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 26, 2023

IN THE MATTER OF:

Appeal Board No. 626370

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 626370 and 626371, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed October 20, 2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective May 16, 2022 through May 22, 2022, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective May 23, 2022 through August 21, 2022, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not adequately developed with respect to the reason the claimant did not call weekly to claim benefits after he filed his claim on May 20, 2022.

In particular, the file includes a summary of a statement taken by a Department of Labor representative after speaking with the claimant on September 8, 2022, which indicates that the claimant provided a reason for

his failure to certify and register that is different from the reason he gave at the hearing. The case is remanded

for the claimant to be confronted with this statement, and given the

opportunity to explain whether and why he

gave that explanation to the Department representative. The summary, in the file at page 5, shall be received into evidence after the appropriate confrontation and opportunity for objection.

In light of the claimant's testimony that he called the Department of Labor nearly every single day after he filed his claim in May until late August 2022 to ask about his claim, the claimant is directed to produce evidence, including but not limited to, phone records to establish the calls he made to the Department during this period. Since the claimant testified that he might have used his house phone in addition to his cell phone to make these calls, he is directed to produce records of calls he made to the Department of Labor from any of the phones he used to place the calls.

In addition, the claimant testified that he took screen shots of the pages he saw after he completed the claim filing process in May 2022, referring to those screen shots and their content during the hearing. The claimant shall produce copies of those screen shots at the remand hearing.

Further, the Commissioner of Labor shall be represented at the hearing, and produce a witness to authenticate and testify to the contents of the call history report received into evidence as Hearing Exhibit 4. The representative should produce any other records kept by the Department of Labor to establish calls made by the claimant after he filed his claim for benefits on May 20, 2022. The representative should be prepared to produce, if necessary, the Department representative who spoke with the claimant by telephone on September 8, 2022 and completed the TCC 413 form documenting this call. The summary identifies this individual as Rebecca A. Alex, LSR.

All relevant documents produced at the remand hearing shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties are on notice that failure to produce the documentation and witnesses directed may result in the hearing Judge or the Board taking an adverse inference against that party, and deciding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of ineligibility on the bases of failure to certify and failure to register, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER